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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION**

MICHAEL HUEY, individually and as
successor-in-interest to decedent J.H., a
minor,

Plaintiff,

vs.

CITY OF VALLEJO, a municipal
corporation; ROBERT NICHELINI,
individually and in his official capacity as
Chief of Police for the CITY OF VALLEJO;
JOSEPH KREINS, in his official capacity
as Chief of Police for the CITY OF
VALLEJO; JANEEN LOTTON; and DOES
1–25, inclusive,

Defendants.

Case No.

COMPLAINT FOR DAMAGES

Demand for Jury Trial

Plaintiff Michael Huey complains against defendants City of Vallejo, Robert
Nichelini, Joseph Kreins, Janeen Lotton, and Does 1 through 25 as follows:

JURISDICTION

1. This action arises under Title 42, United States Code, section 1983. The Court's
jurisdiction is invoked under 28 United States Code, section 1331 because this case

1 arises under the Constitution and laws of the United States, and under 28 United States
2 Code, section 1343 because this action is brought to recover damages under any Act of
3 Congress providing for the protection of civil rights.

4 2. The state law claims in this action are so related to claims in the action within
5 original jurisdiction that they form part of the same case or controversy under Article III
6 of the United States Constitution. The Court's jurisdiction over these claims is invoked
7 under 28 United States Code, section 1367.
8

9 **VENUE**

10 3. Venue is proper in the Eastern District of California because a substantial part of
11 the events or omissions giving rise to the claims occurred in this District.
12

13 **PARTIES**

14 4. Plaintiff Michael Huey is the father and successor-in-interest to decedent J.H.,
15 who had no children. He brings this action on his own behalf and as successor-in-
16 interest to his son, decedent J.H.. At all relevant times, Michael Huey was a resident of
17 Solano County.
18

19 5. Defendant City of Vallejo is a municipal corporation, duly organized and existing
20 under the laws of the State of California. Under its authority, City of Vallejo operates the
21 Vallejo Police Department.
22

23 6. At all relevant times through approximately July 15, 2012, defendant Robert
24 Nichelini was employed by City of Vallejo as Chief of Police for the Vallejo Police
25 Department. He is being sued individually and in his official capacity as Chief of Police
26 for the City of Vallejo.
27

28 7. Starting approximately July 16, 2012, defendant Joseph Kreins was employed by
City of Vallejo as Interim Chief of Police for the Vallejo Police Department. Effective

1 approximately December 16, 2012, he became Chief of Police. He is being sued in his
2 official capacity as Chief of Police for the City of Vallejo.

3 8. Janeen Lotton is the birth mother of decedent. Ms. Lotton's consent to be joined
4 as a plaintiff cannot be obtained because she abandoned decedent at birth and did not
5 live with decedent while decedent was alive, and Solano County Health and Social
6 Services determined in 2008 that she would be a very high risk to decedent if he were
7 placed in her care.
8

9 9. The true names and capacities of the defendants named as Does 1 through 25,
10 inclusive, whether individual, corporate, associate, or otherwise, are unknown to
11 plaintiff, who therefore sues such defendants by fictitious names. Plaintiff alleges based
12 on information and belief that each of the fictitiously named defendants is responsible
13 in some manner for the occurrences and damages alleged in this complaint. Plaintiff
14 alleges based on information and belief that each of the fictitiously named defendants is
15 a California resident. Plaintiff will amend this complaint to show the true names and
16 capacities of each of the fictitiously named defendants when such names and capacities
17 have been determined.
18
19

20 10. In engaging in the conduct described in this complaint, defendants Robert
21 Nichelini, Joseph Kreins, and Does 1–25 acted under the color of law and in the course
22 and scope of their employment with the City of Vallejo. In engaging in such conduct,
23 defendants exceeded the authority vested in them as police officers under the United
24 States and California Constitutions and as police officers employed by the City of
25 Vallejo.
26
27
28

FACTUAL BACKGROUND

11. Decedent J.H. lived with his father, plaintiff Michael Huey, from the time of his birth to the time of his death, except for the period August 2007 to April 2008 when decedent was in foster care.

12. Decedent was 17 years old on June 30, 2012.

13. On June 30, 2012, at approximately 9:50 a.m., Vallejo police officers began chasing a truck believed to be the getaway vehicle from an alleged armed robbery of a convenience store located in Vallejo, California.

14. At approximately 9:55 a.m., the truck ran into a fire hydrant near the intersection of Sheridan Street and Lemon Street, Vallejo, causing it to stop.

15. Decedent got out of the vehicle and threw an object into nearby bushes.

16. Decedent ran from the scene of the vehicle accident to a nearby duplex, 607/609 Sheridan Street, Vallejo.

17. Decedent climbed over a concrete fence into the yard of the duplex and cowered in a corner near the fence.

18. Within minutes, multiple Vallejo police cars converged upon the duplex.

19. Vallejo police officers announced: "Get the kids out of the park! There's gonna be a shootout!", "We'll get your little ass, motherfucker!" "We'll teach you to do shit in our town!" and, "You think you're slick, little boy?!"

20. At approximately 10:00 a.m., officer Doe ¹ arrived at the duplex and took a rifle from his vehicle.

¹ Plaintiff's counsel made a Public Records Act request for the names of persons involved in the incident. The names of the officers who shot decedent are redacted in the police report.

1 21. At approximately 10:06 a.m., a Vallejo police officer determined that decedent
2 was in the yard of the duplex near the fence.

3 22. Vallejo police officers gave orders to decedent: "Let me see your hands!" "Don't
4 move!" and "Stay down!"

5 23. At approximately 10:08 a.m., officer Doe 1 stood on a step-stool near the fence,
6 looked over the fence, and then pointed his rifle over the fence.

7 24. At the same time, officer Doe 2 pointed a gun over the fence.

8 25. Decedent had his hands up in the air, and yelled "Don't Shoot!" "No! No!"

9 26. Officers Doe 1 and Doe 2 collectively fired their weapons approximately 10 to 20
10 times at decedent.

11 27. Decedent died within minutes of officers Doe 1 and Doe 2 opening fire. His cause
12 of death was multiple gunshot wounds.

13 28. After officers Doe 1 and Doe 2 fired their weapons, a Vallejo police officer yelled
14 "Find the gun!"

15 29. Vallejo police officers searched for at least 40 minutes and ultimately found a gun
16 in another yard.

17 30. During the period of approximately May 25 to October 21, 2012, there were 10
18 shootings involving Vallejo police officers, resulting in six fatalities. No officers were
19 harmed in any of the shootings. In one case that occurred in May of 2012, the individual
20 killed by the officers allegedly pulled out a metallic wallet. In another case that occurred
21 in September of 2012, the officers fired approximately 30 times at an individual who
22 allegedly was carrying a pellet gun.

23 31. Plaintiff is informed and believes that during 2012, while either defendant Robert
24 Nichelini or defendant Joseph Kreins or both was serving as Chief of Police of the
25
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27
28

1 Vallejo Police Department, the training policies of defendant City of Vallejo regarding
2 police officer use of deadly force were inadequate, that the City of Vallejo was
3 deliberately indifferent to the obvious consequences of the inadequate policies, and that
4 the inadequate policies caused the six fatal shootings, including that of decedent.
5

6 32. Under a Vallejo City Ordinance, defendants Robert Nichelini and Joseph Kreins,
7 in their capacity as Chief of Police of the Vallejo Police Department, were or are policy
8 makers for defendant City of Vallejo with respect to law enforcement plans, policies,
9 programs, rules, regulations, and orders.
10

11 33. Chief Kreins learned of the conduct of officers Doe 1 and Doe 2 with respect to
12 decedent, and then publicly defended it.

13 34. On December 24, 2012, Michael Huey presented a claim pursuant to the
14 Government Tort Claims Act to the City of Vallejo regarding the matters described in
15 this complaint. On April 8, 2013, the City of Vallejo rejected Michael Huey's claim.
16

17 **FIRST CLAIM FOR EXCESSIVE FORCE**

18 (by plaintiff Michael Huey as successor-in-interest to decedent J.H.
19 against defendants Robert Nichelini, in his individual and official capacities;
20 Does 1–25, in their respective individual capacities;
21 and Joseph Kreins, in his official capacity)

22 (42 U.S.C. § 1983)

23 35. Plaintiff incorporates by reference paragraphs 1 through 34 above as though fully
24 set forth in this section.

25 36. By virtue of the foregoing, defendants Doe 1 and Doe 2 acted under color of law
26 by engaging in the extrajudicial killing of decedent J.H. without lawful justification and
27 deprived decedent of his right under the Fourth Amendment of the United States
28 Constitution to be free of unreasonable seizure of his person by using excessive force.

1 37. By virtue of the foregoing, defendant Robert Nichelini set in motion a series of
2 acts by his subordinates, Doe 1 and Doe 2, that he knew or reasonably should have
3 known would cause the subordinates to deprive decedent of his right under the Fourth
4 Amendment of the United States Constitution to be free of unreasonable seizure of his
5 person.
6

7 38. By virtue of the foregoing, defendant Joseph Kreins acquiesced in and ratified the
8 acts of Doe 1 and Doe 2 that deprived decedent of his right under the Fourth
9 Amendment of the United States Constitution to be free of unreasonable seizure of his
10 person.
11

12 **SECOND CLAIM FOR VIOLATION OF**
13 **PARENTAL RIGHT TO FAMILIAL RELATIONSHIP**

14 (by plaintiff Michael Huey against defendants Robert Nichelini, in his individual and
15 official capacities; Does 1–25, in their respective individual capacities;
16 and Joseph Kreins, in his official capacity)

17 (42 U.S.C. § 1983)

18 39. Plaintiff incorporates by reference paragraphs 1 through 38 above as though fully
19 set forth in this section.

20 40. By virtue of the foregoing, defendants Doe 1 and Doe 2 acted under color of law
21 by engaging in the extrajudicial killing of decedent J.H. without lawful justification and
22 deprived Michael Huey of his substantive due process right under the Fourteenth
23 Amendment of the United States Constitution to the companionship and society of and
24 association with his child.

25 41. By virtue of the foregoing, defendant Robert Nichelini set in motion a series of
26 acts by his subordinates, Doe 1 and Doe 2, that he knew or reasonably should have
27 known would cause the subordinates to deprive Michael Huey of his substantive due
28

1 process right under the Fourteenth Amendment of the United States Constitution to the
2 companionship and society of and association with his child.

3 42. By virtue of the foregoing, defendant Joseph Kreins acquiesced in and ratified the
4 acts by Doe 1 and Doe 2 that deprived Michael Huey of his substantive due process right
5 under the Fourteenth Amendment of the United States Constitution to the
6 companionship and society of and association with his child.
7

8 **THIRD CLAIM FOR VIOLATION OF**
9 **A CHILD'S RIGHT TO FAMILIAL RELATIONSHIP**

10 (by plaintiff Michael Huey as successor-in-interest to decedent J.H. against Robert
11 Nichelini, in his individual and official capacities; Does 1–25, in their respective
12 individual capacities; and Joseph Kreins, in his official capacity)

13 (42 U.S.C. § 1983)

14 43. Plaintiff incorporates by reference paragraphs 1 through 42 above as though fully
15 set forth in this section.

16 44. By virtue of the foregoing, defendants Doe 1 and Doe 2 acted under color of law
17 by engaging in the extrajudicial killing of decedent J.H. without lawful justification and
18 deprived decedent of his substantive due process right under the Fourteenth
19 Amendment of the United States Constitution to the companionship and society of and
20 association with his parent.
21

22 45. By virtue of the foregoing, defendant Robert Nichelini set in motion a series of
23 acts by his subordinates, Doe 1 and Doe 2, that he knew or reasonably should have
24 known would cause the subordinates to deprive decedent of his substantive due process
25 right under the Fourteenth Amendment of the United States Constitution to the
26 companionship and society of and association with his parent.
27
28

1 46. By virtue of the foregoing, defendant Joseph Kreins acquiesced in and ratified the
2 acts by Doe 1 and Doe 2 that deprived decedent of his substantive due process right
3 under the Fourteenth Amendment of the United States Constitution to the
4 companionship and society of and association with his parent.
5

6 **FOURTH CLAIM FOR MUNICIPAL LIABILITY—RATIFICATION**

7 (by plaintiff Michael Huey as successor-in-interest to decedent J.H.
8 against defendant City of Vallejo)

9 (42 U.S.C. § 1983)

10 47. Plaintiff incorporates by reference paragraphs 1 through 46 above as though fully
11 set forth in this section.

12 48. By virtue of the foregoing, defendant Joseph Kreins, acted under color of law and
13 as a final policymaker for defendant City of Vallejo, when he ratified the conduct of
14 defendants Doe 1 and Doe 2 to deprive (1) decedent J.H. of his right under the Fourth
15 Amendment of the United States Constitution to be free of unreasonable seizure of his
16 person, (2) Michael Huey of his substantive due process right under the Fourteenth
17 Amendment of the United States Constitution to the companionship and society of and
18 association with his child, and (3) decedent of his substantive due process right under
19 the Fourteenth Amendment of the United States Constitution to the companionship and
20 society of and association with his parent.
21

22 **FIFTH CLAIM FOR MUNICIPAL LIABILITY—FAILURE TO TRAIN**

23 (by plaintiff Michael Huey as successor-in-interest to decedent J.H.
24 against defendant City of Vallejo)

25 (42 U.S.C. § 1983)

26 49. Plaintiff incorporates by reference paragraphs 1 through 48 above as though fully
27 set forth in this section.
28

1 50. By virtue of the foregoing, defendant City of Vallejo was deliberately indifferent
2 to the obvious consequences of its failure to train its police officers as a result of
3 inadequate training policies, which caused defendants Doe 1 and Doe 2 to deprive (1)
4 decedent J.H. of his right under the Fourth Amendment of the United States
5 Constitution to be free of unreasonable seizure of his person, (2) Michael Huey of his
6 substantive due process right under the Fourteenth Amendment of the United States
7 Constitution to the companionship and society of and association with his child, and (3)
8 decedent of his substantive due process right under the Fourteenth Amendment of the
9 United States Constitution to the companionship and society of and association with his
10 parent.
11

12
13 **SIXTH CLAIM FOR BATTERY BY A POLICE OFFICER**

14 (by plaintiff Michael Huey as successor-in-interest to decedent J.H. against defendants
15 Does 1–25 in their respective official capacities,
16 and defendant City of Vallejo)

17 51. Plaintiff incorporates by reference paragraphs 1 through 50 above as though fully
18 set forth in this section.

19 52. By virtue of the foregoing, defendants Doe 1 and Doe 2 intentionally subjected
20 decedent J.H. to the use of unreasonable force.

21 53. By virtue of the foregoing, defendant City of Vallejo learned that Doe 1 and Doe 2
22 intentionally subjected decedent to the use of unreasonable force and approved such
23 conduct.
24

25 54. By virtue of the foregoing, defendant City of Vallejo is liable for the acts of its
26 employees, Doe 1, Doe 2, and Chief Kreins, each of whom acted within the course and
27 scope of his employment.
28

SEVENTH CLAIM FOR NEGLIGENCE

(by plaintiff Michael Huey as successor-in-interest to decedent J.H. against defendants Does 1–25 in their official capacities, and defendant City of Vallejo)

55. Plaintiff incorporates by reference paragraphs 1 through 54 above as though fully set forth in this section.

56. By virtue of the foregoing, defendants Doe 1 and Doe 2 breached their duty to not use excessive force against decedent J.H. and this breach was the proximate cause for decedent's harm.

57. By virtue of the foregoing, defendant City of Vallejo learned that Doe 1 and Doe 2 breached their duty to not use excessive force against decedent and approved such conduct.

58. By virtue of the foregoing, defendant City of Vallejo is liable for the acts of its employees, Doe 1, Doe 2, and Chief Kreins, each of whom acted within the course and scope of his employment.

EIGHTH CLAIM FOR WRONGFUL DEATH

(by plaintiff Michael Huey against defendants Does 1–25 in their respective official capacities, and defendant City of Vallejo)

(Cal. Code Civ. Proc., § 377.60)

59. Plaintiff incorporates by reference paragraphs 1 through 58 above as though fully set forth in this section.

60. By virtue of the foregoing, defendants Doe 1 and Doe 2 intentionally subjected decedent J.H. to unreasonable force, and breached their duty to not use excessive force against decedent, resulting in the death of decedent and pecuniary loss to plaintiff Michael Huey.

1 61. By virtue of the foregoing, defendant City of Vallejo learned that Doe 1 and Doe 2
2 intentionally subjected decedent to unreasonable force and breached their duty to not
3 use excessive force against decedent and approved such conduct.

4 62. By virtue of the foregoing, defendant City of Vallejo is liable for the acts of its
5 employees, Doe 1, Doe 2, and Chief Kreins, each of whom acted within the course and
6 scope of his employment.
7

8 **DAMAGES**

9 63. As a result of the actions of defendants, plaintiff Michael Huey has been injured
10 and has suffered damages as follows:
11

12 a. He has been physically, mentally, emotionally, and financially injured and
13 damaged as a proximate result of J.H.'s wrongful death, including, but not limited to,
14 the loss of decedent's love, companionship, comfort, care, assistance, protection,
15 affection, society, and moral support;
16

17 b. He has incurred funeral and burial expenses;

18 c. He has lost the value of financial support that decedent would have
19 contributed to the family;

20 d. In his capacity as successor-in-interest to decedent, he is entitled to recover
21 for the loss or damage that the decedent sustained or incurred before death,
22 including any penalties or punitive or exemplary damages that the decedent would
23 have been entitled to recover had the decedent lived.
24

25 e. In taking the actions alleged above, defendants Doe 1, Doe 2, Robert
26 Nichelini, and Joseph Kreins engaged in conduct that was malicious, oppressive, and in
27 reckless disregard of the rights of decedent and plaintiff Michael Huey.
28

1 Accordingly, plaintiff Michael Huey is entitled to punitive damages against
2 defendants Doe 1, Doe 2, Robert Nichelini, and Joseph Kreins.

3
4 Plaintiff requests that this Court grant him relief as follows:

- 5 (1) General damages, in an amount to be determined;
6 (2) Special damages, in an amount to be determined;
7 (3) Punitive damages, in an amount to be determined;
8 (4) Reasonable attorney's fees under 42 U.S.C., § 1988;
9 (5) Injunctive relief;
10 (6) Costs of suit; and
11 (7) Such other and further relief as the Court may deem proper.

12
13 **DEMAND FOR TRIAL BY JURY**

14 Plaintiff hereby demands a jury trial as provided by Rule 38(a) of the Federal Rules
15 of Civil Procedure.
16

17
18 Dated: May 9, 2013

19
20 SIEGEL & YEE

21
22 By: s/Dean Royer
23 Dean Royer

24 Attorneys for plaintiff
25 MICHAEL HUEY
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